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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Trinity)

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL NOAH SPOHN,

Defendant and Appellant.

C066278

(Super. Ct. No.
08F0125)

Because the matter was resolved by plea, our statement of facts is taken from the probation officer's report. In October 2008, a trailer at the Hobart Creek Campground in Ruth, California was broken into and food was taken from the trailer. Around this same time, a stolen truck was recovered from the same campground.

The truck had been stolen from the Lewiston area. Witnesses provided a description of the driver that fit defendant Paul Noah Spohn. The victim of the trailer burglary

examined the truck and identified several food items that had been taken from his trailer.

Officers from the California Highway Patrol and the Trinity County Sheriff's Department responded to these incidents. A United States Forest Service law enforcement officer located defendant. A search of his person yielded keys to the stolen truck.

In April 2009, defendant's appointed counsel, Frank O'Connor, opined that defendant was not competent to stand trial. Criminal proceedings were suspended and Dr. McGee Williams was appointed to evaluate defendant.

In June 2009, the matter was submitted on Dr. Williams's report. Defendant was found competent and criminal proceedings were reinstated.

Attorney O'Connor made an oral motion to be relieved as counsel. The motion was granted and attorney Wilson was appointed to represent defendant.

In March 2010, defendant made a *Marsden* motion as to attorney Wilson. (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).) Attorney Wilson was relieved and attorney McNally was appointed to represent defendant.

In May 2010, defendant made a *Marsden* motion as to attorney McNally. That motion was denied.

In June 2010, defendant made a second *Marsden* motion as to attorney McNally. The motion was denied.

Defendant pleaded no contest to first degree burglary. (Pen. Code, §§ 459, 460, subd. (a))--count seven; unspecified

section references that follow are to the Penal Code.) In exchange, seven related counts and four prior prison term allegations were dismissed with a *Harvey* waiver as to counts one, two, three, four, and eight. (*People v. Harvey* (1979) 25 Cal.3d 754.)

In August 2010, defendant made a third *Marsden* motion as to attorney McNally. The motion was denied.

Defendant was sentenced to state prison for four years, awarded 649 days' custody credit and 648 days' conduct credit, and ordered to pay an \$800 restitution fine (\$ 1202.4) and an \$800 restitution fine suspended unless parole is revoked (\$ 1202.45). Defendant obtained a certificate of probable cause.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant requested extensions of time to file his supplemental brief. We granted his requests, first to November 16, 2011, and then to December 16, 2011, with the indication that no further time would be granted. Defendant did not file a supplemental brief by the December 16, 2011, deadline. On March 19, 2012, we received correspondence from defendant that did not include his supplemental brief. We

returned the correspondence to defendant pursuant to *People v. Clark* (1992) 3 Cal.4th 41, 173.

Our review of the record discloses that defendant was in custody from October 24, 2008, through sentencing on August 4, 2010, a period of 650 days. Thus, defendant is entitled to 650 days' custody credit.

Defendant's conduct credit is calculated pursuant to section 4019 as it existed at sentencing in August 2010. (Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 50, eff. Jan. 25, 2010.) Evidently intending to comply with this provision, the probation department recommended one-for-one conduct credit, evidently not realizing that defendant was committed for a serious felony. At sentencing, the parties correctly noted that defendant's offense was a serious felony but not a violent felony. However, like the probation department, the parties overlooked the fact that the 2010 amendment to section 4019 did not provide enhanced conduct credit for persons presently committed for serious felonies.

Because defendant's offense, first degree burglary, is a serious felony (§ 1192.7, subd. (c)(18)), his conduct credit is computed pursuant to section 4019, former subdivisions (b)(2) and (c)(2). Thus, defendant's 650 days' custody credit entitles him to 324 days' conduct credit. We shall modify the judgment accordingly.

The 2010 amendment to section 2933 does not apply to this case because defendant was committed for a serious felony.

(Former § 2933, subd. (e)(3), as amended by Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010.)

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to award defendant 650 days' custody credit and 324 days' conduct credit. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

HULL, Acting P. J.

We concur:

BUTZ, J.

MAURO, J.